

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

KELVIN RENARD JOHNSON,

Defendant.

Nos. CR-01-0132-FVS

ORDER DENYING DEFENDANT'S
MOTION FOR RELIEF PURSUANT TO
18 U.S.C. § 3582(c) (2)

THIS MATTER came before the Court on Defendant's motion for relief pursuant to 18 U.S.C. § 3582(c) (2) based on "retroactive amended guidelines effective 11/01/2011." (ECF No. 75). Assistant United States Attorney Timothy J. Ohms represents the United States, and Defendant is proceeding pro se.

BACKGROUND

On February 11, 2002, Defendant pleaded guilty in a Rule 11(e) (1) (C) plea agreement to the crimes of distribution of cocaine base, distribution of over 5 grams of cocaine base, and possession with intent to distribute over 5 grams of cocaine base, each in violation of 21 U.S.C. § 841(a) (1). (ECF No. 49). Defendant also pleaded guilty to three counts in violation of 18 U.S.C. § 922(g) for felon in possession of firearm and ammunition.

1 The parties stipulated in the plea agreement that Defendant's
2 base offense level was 34 because he qualified as a Career Offender.
3 U.S.S.G. § 4B1.1. Thereafter, the Court applied a three-level
4 reduction for timely acceptance of responsibility pursuant to U.S.S.G.
5 § 3E1.1. Based on the stipulation within the plea agreement (ECF No.
6 49 ¶ 3) and U.S.S.G. § 2D1.1(b), the Court then applied a two-level
7 increase to Defendant's offense level for possession of a dangerous
8 weapon. Based on an adjusted offense level of 33 and a criminal
9 history category VI, Defendant's guideline range was 235-293 months
10 incarceration. The parties jointly recommended that Defendant be
11 sentenced to a term of imprisonment of 240 months. (ECF No. 49 ¶
12 3(E)). On June 17, 2002, the Court sentenced Defendant to 240 months
13 incarceration.

14 **DISCUSSION**

15 Defendant argues that he is eligible for a reduction of his
16 sentence based on "the retroactively applied guidelines that were
17 released in June 2011." (ECF No. 75 at 1). Defendant requests that
18 the Court modify his sentence according to the new provisions for
19 crack cocaine. (ECF No. 75 at 2).

20 Defendant, however, received a Career Offender enhancement
21 pursuant to U.S.S.G. § 4B1.1 which gave him a base offense level of 34
22 and a Criminal History Category of VI. The enhancement to a base
23 offense level of 34 was not based on the quantity of drugs involved,
24 but rather on Defendant being at least 18 years old at the time he
25 committed the offense of conviction, the offense was a felony
26 controlled substance offense, Defendant had at least two prior felony

1 convictions of either a crime of violence or a controlled substance
2 offense, and the statutory maximum for the offense of conviction was
3 "20 years or more." See U.S.S.G. §4B1.1.

4 If an amendment to the guidelines does not change the original
5 sentencing analysis, a motion for reduction of sentence under 18
6 U.S.C. § 3582(c)(2) is properly denied. *United States v. Townsend*, 98
7 F.3d 510, 513 (9th Cir. 1996). As discussed above, Defendant's
8 guideline range was based on his Career Offender enhancement. The new
9 provisions for crack cocaine do not have the effect of lowering
10 Defendant's applicable guideline range. Hence, a reduction of
11 Defendant's sentence is not authorized under § 3582(c)(2).

12 The Court being fully advised, Defendant's motion pursuant to 18
13 U.S.C. § 3582(c)(2) based on "retroactive amended guidelines" (**ECF No.**
14 **75**) is **DENIED**.

15 **IT IS SO ORDERED.** The District Executive shall forward copies of
16 this order to Defendant and counsel for the Government.

17 **DATED** this 2nd day of December, 2011.

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19 S/Fred Van Sickle
Fred Van Sickle
Senior United States District Judge
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